

Part VI.

APPENDICES, FIGURES, & FORMS

Appendix A

Questions and Answers About 1-d-1 Qualification

The following examples describe practical problems in the qualification of land for agricultural appraisal. They should help tax administrators understand the principles behind qualifying land for special appraisal.

1. **Q.** A property owner has acquired four contiguous tracts over the years. The tracts are not divided by fences; in fact, they are used together as a single ranch operation. How should the owner file the application(s) for special appraisal as 1-d-1 land?

A. The property owner should file one application covering all four tracts. Even if the tracts appear as individual accounts in the appraisal records and on the appraisal roll, the property owner's use of the tracts together, in a single agricultural operation, means that he need only file a single application. Owners should also file a single application if the parcels making up a single agricultural operation are not contiguous.

Both property owners and appraisal districts need to be alert to the possibility that a particular parcel may be used as part of a larger operation. Districts should inform potential applicants; applicants should point out larger uses to the district.

Page 13 discusses the issues this question raises.

2. **Q.** The chief appraiser in a certain district has established a blanket policy that no parcel smaller than 10 acres in size can qualify for special agricultural appraisal. A property owner has an orchard that has 9.5 acres of pecan trees. May this tract qualify?

A. Any policy that establishes arbitrary minimum sizes for acreage is invalid, but a policy of following guidelines that include minimum tract sizes for each class or subclass of land, based on the principal uses of the tracts and upon the general intensity of a typical operation in the area, is probably valid.

The chief appraiser cannot fix a totally arbitrary limit on parcel size. Where smaller tracts of land meet the statutory requirements, they may still qualify. The orchard land could still qualify for agricultural appraisal if it is being used to the intensity typical in the area.

There is no minimum (or maximum) amount of acreage that may qualify for special

appraisal. Obviously, tethering a cow, keeping a chicken coop, or raising a small pen of goats cannot by itself qualify land as having an agricultural use. There must be a use that is "to the degree of intensity typical in the area" and a use that is "principally . . . agricultural." In many cases, smaller tracts will not qualify under the statutes.

The chief appraiser must become extremely familiar with agricultural activities in the area. He may create guidelines using some minimum size restrictions but only if they relate to the proper agricultural economy of land. For example, a chief appraiser may determine that—based on the type of land and soil prevalent within the appraisal district—it takes 22 acres of grazing land to support one animal unit. Persons having less than the minimum under continuous use probably could not qualify for special appraisal. This land should be reviewed carefully before agricultural use appraisal is granted.

However, there are many bona fide agricultural pursuits that can take place on small tracts: vineyards, orchards, or specialty crops like strawberries, herbs, and row vegetables. For these types of products, the minimum "agricultural" size of the tracts could be quite small. Growing tomatoes and cucumbers in a backyard garden, however, does not mean that the land is a farm. Having a cow and calf penned in a small enclosure does not make the land a ranch.

Pages 6 to 9 discuss the issues this question raises.

3. **Q.** After several years of losing money on failed crops, a property owner decides to place his acreage in a federal farm subsidy program. Under the program, the farmer is only permitted to grow cover crops. He receives payments for his participation in the program. The farmer's land has qualified for 1-d-1 appraisal for several years. Does the land still qualify?

A. Yes. Participation in a government program to reduce production does not bar agricultural appraisal under Sec. 1-d-1.

Pages 29 to 30 discuss the issues this question raises.

4. **Q.** After several years of losing money on failed crops, a property owner decides to let his land lie idle. He plants clover on the land but does not participate in any farm subsidy program. His land has qualified for 1-d-1 agricultural appraisal in prior years. The normal period for crop rotation for his type of crop and soil is only one year. Now that he has taken his land out of production for his particular crop without joining a governmental program, does the land qualify?

A. The tract will lose its qualification and suffer a rollback at the beginning of the second year the land is idle. A farmer may still receive agricultural appraisal under 1-d-1 for taking the land out of production for an acceptable period to rejuvenate the soil. In this example, the rotation period is one year. By the second year, the land has been out of production for too long. The land is not being used for an agricultural purpose to the degree of intensity typical in the area in that year. For other types of crops, the rotation period could be shorter or longer, and the land would qualify until it has been out of production longer than the normal rotation period for that crop. Keeping the land out of production longer than normal causes loss of agricultural use appraisal and triggers the rollback.

Pages 31-32 discuss the issues this question raises.

5. **Q.** A landowner has a large unfenced acreage tract where deer and other native wild-life roam and eat natural vegetation. The land is leased for deer hunting, and the owner receives \$5,000 per year from the leases. He also receives \$10,000 per year from mineral interests and social security benefits. Does the tract qualify?

A. No. Permitting wild deer to eat natural vegetation is not an agricultural use. The property owner cannot show that the land is used for an agricultural activity. Here, the property owner failed to perform any affirmative act that meets the statutory definition

of agricultural use.

Had the owner qualified, only the income from the land would be considered. Mineral interests are separately appraised at market value. The income from minerals is not taken into consideration for purposes of calculating net to land.

Pages 6 to 9 discuss the issues this question raises.

6. **Q.** A property owner has been digging up yaupon bushes that are growing wild on his land. He sells the bushes to a retail nursery for use in residential landscaping. Does the land qualify?

A. No. If all the property owner does is dig up wild bushes, he is not engaged in agriculture. To qualify, a person should be able to point to affirmative acts that indicate he is growing nursery stock—tilling soil, propagating plants, trimming, and selectively harvesting.

Page 7 discusses the issues this question raises.

7. **Q.** A property owner has a large tract populated by wild quail and pheasant. The owner does not grow anything or graze cattle; he only leases the land for hunting purposes. Does the tract qualify?

A. No. The primary use of this land is for recreational purposes. Wild animals surviving on natural ground cover are not livestock. Therefore, no agricultural function is performed on the land.

Page 7 discusses the issues this question raises.

8. **Q.** A farmer's land is solely devoted to raising dairy cattle and processing milk. Most of the land is used for grazing cattle, but barns, sheds, and other buildings used for milking, storing hay, and repairing equipment occupy 10 acres. A pasteurizing and bottling plant occupies four acres. What part, if any, of the buildings or land qualifies for special appraisal?

A. The buildings must be appraised separately at their market value, since only land receives agricultural appraisal. "Land" includes appurtenances such as private roads, dams, canals, ditches, stock tanks, and other reshaping of the soil.

The land beneath farm outbuildings may receive agricultural appraisal when that area contributes to the production of primary agricultural products on the entire tract. Almost every farm or ranch requires some land for storage of the equipment, feed, seed, or other necessary items used in the agricultural operation. Without equipment and supplies, there could be no agricultural use anywhere on the tract. The 10 acres used for barns, storage, milking, and repair would qualify for agricultural appraisal. The four acres used for pasteurizing and bottling milk would not qualify, since those activities constitute processing of primary products.

Appraisers should distinguish between the value of the structures and the value of the personal property in them (such as milking machines, tractors, etc.). Implements of husbandry are not taxed. Any machinery used to process milk—such as the pasteurizing and bottling equipment—is not an implement of husbandry and would be taxed at its market value.

Pages 6 to 8 discuss the issues this question raises.

9. **Q.** A property owner maintains a number of bee hives on a small corner of his large tract. The bees fly over the entire tract to collect pollen. The honey is sold as a commercial venture. The rest of the tract is lying idle. Does the entire tract qualify?

A. No. Only the immediate area where the hives are located and honey produced qualifies as land used for an agricultural purpose.

The area immediately surrounding the hives where the honey production takes place is devoted principally to agricultural use. It is unlikely that any of the larger

tract, over which the bees fly, is being used to the degree of intensity typical in the area. However, if the owner had planted the entire tract with a special crop suited to produce a type of pollen or nectar that produces desirable honey and there were a sufficient number of hives to harvest the nectar, the remainder of the tract would qualify if it met the degree of intensity and other tests.

Pages 6 to 10 discuss the issues this question raises.

10. **Q.** A landowner grows poinsettias on his land. By early November of each year his poinsettias are shipped to markets for sale during the Christmas season. The farmer also grows lilies and ferns in his nursery. He sells these to local florists all year long. Does this tract qualify?

A. Yes. The tract qualifies if it meets the primary use and degree of intensity tests. The cultivation of these plants and other ornamental or flowering plants raised in a nursery qualifies the owner's land for 1-d-1 appraisal (so long as the process meets the degree of intensity test). Floriculture is an appropriate agricultural use for 1-d-1 designation.

Page 7 discusses the issues this question raises.

11. **Q.** A landowner grows roses in a commercial operation. Some rose bushes are sold wholesale to dealers and others are sold directly to the public. A blizzard killed all of his rose bushes and eroded some of his land. As a result, as of January 1 there was no actual cultivation of the land, but the property owner replanted in the spring. Does the tract qualify?

A. Yes. Growing roses for profit is an appropriate agricultural use if it meets the primary use and degree of intensity tests. It does not matter that there was not actual cultivation on January 1.

Land can still be devoted principally to agricultural use in a given year even if it is not being actually used for an agricultural purpose on January 1. Based on the rose grower's past use of land, intent to re-establish the rose beds, and—most important—an active return to growing rosebushes after the winter is over, land would be devoted to floriculture that year.

The chief appraiser must examine available evidence and decide whether land is "currently devoted principally to agricultural use."

Pages 6 to 8 discuss the issues this question raises.

12. **Q.** A property owner plants grapevines, intending to eventually sell grapes to a domestic winery. Over the course of six years he has planted hundreds of acres of vineyards. So far he has not realized a single dollar of income because his vines were too immature. Does the tract qualify?

A. Yes. First, many types of operations require more than a year before a crop can be harvested. The question is whether the preparations meet typical degree of intensity tests. Second, "profit" is not really relevant. 1-d-1 has no requirement for income or profit. 1-d is somewhat different, but even it requires only that the owner intend to produce income.

Pages 6 to 8 discuss the issues this question raises.

13. **Q.** A 70-acre tract that is fenced is, by deed, a single tract. For the past five years, the owner has cultivated a vegetable garden on three acres, and small grains on 17 acres. The remaining 50 acres is used for fishing, swimming, and camping for family and friends. Does the tract qualify?

A. The 50 acres used for recreational and sporting purposes clearly cannot qualify because there is no current agricultural use. The chief appraiser should deny the application on the 50 acres. In order to determine whether the 20 acres used to grow veg-

etables and small grains qualifies, the chief appraiser would need to request information on the specific crops grown, the amounts harvested, and the agricultural and management practices. This information should enable him to determine whether the 20 acres are worked to the degree of intensity a prudent operator would work them.

The initial burden of proving land's agricultural qualifications rests on the applicant.

Pages 8 to 9 discuss the issues this question raises.

14. **Q.** A property owner uses land for the commercial breeding and raising of catfish. The operation includes a series of large fish tanks (man-made ponds) where the different sized fish are kept. Does any or all of this tract qualify for special appraisal?

A. Yes. All of the land used primarily for fish production qualifies for agricultural appraisal, assuming it meets the degree of intensity test. The Texas Attorney General has ruled that fish farming qualifies as an agricultural use of land. However, the mere harvesting of fish or shellfish from the natural environment, such as capturing shellfish from saltwater tidelands, does not qualify. The difference is that there must be an actual land-based operation that encloses or domesticates the fish.

The tanks themselves are included in the special appraisal as appurtenances to the land. The ponds are only reshaping of the soil and not improvements affixed to the soil, and their value is included in the land value. Any other kind of structure or fixture—a hatching house, pumping station, or other structure—is an improvement and is appraised separately at market value.

Pages 7 and 8 discuss the issues this question raises.

15. **Q.** A farmer owns many acres of land upon which he grows Christmas trees. The entire tract is devoted to raising the trees to be sold each year for profit. Does the tract qualify?

A. Yes, the tract qualifies if it meets the degree of intensity requirements. The Christmas trees qualify as an appropriate agricultural use. The trees are ornamental plants; the statute permits special appraisal of land used for horticulture.

Page 7 discusses the issue this question raises.

16. **Q.** A farmer grows many acres of Saint Augustine and other lawn grass that is cut and sold as sod. Does the sod farm qualify for agricultural appraisal?

A. Yes, if the tract meets the degree of intensity requirement. Growing sod falls within the definition of an agricultural use (as horticulture, growing ornamental plants).

Sod production may not fit readily into typical classifications like cropland or native pastureland. The economics of sod production—the irrigation systems, higher maintenance and labor effort, and typically higher per acre income—may require the chief appraiser to develop a separate class more specific to sod farms.

Page 7 discusses the issues this question raises.

17. **Q.** Land is used for growing peaches in a commercial-scale operation. Is the land eligible for productivity appraisal and how are the peaches or trees listed in the property records?

A. Yes. The land may receive productivity appraisal. The trees are part of the land and are included in the agricultural appraisal as appurtenances to land. The peaches are also part of the land until harvest, when they become personal property. Remember, though, that farm products are exempt when in the hands of the producer.

Pages 6 to 7 discuss the issues this question raises.

18. **Q.** A property owner has a large tract containing a large herd of axis deer. The deer

are enclosed by a security fence over six feet tall. At scheduled times throughout the year, young deer are harvested. The meat and hides are sold to commercial dealers for human use and consumption. Additionally, the property owner permits recreational hunting when the herd size becomes unmanageable. Does the tract qualify for special use appraisal?

A. Yes. All of the land associated with the grazing, breeding, and harvesting of the axis deer qualifies so long as it is used to the degree of intensity that is typical of area agricultural operations. The size of the herd, the security fencing, and the fact that the ranch is a commercial operation indicate that the land is used to "the degree of intensity typical in the area."

Although recreational hunting is permitted to control herd size, the primary use of the ranch is agricultural. The year-round harvesting schedules and the herd management and harvesting procedures that emphasize desirable agricultural products over recreational products are some proof that the primary use is agricultural.

Page 8 discusses the issue this question raises.

- 19. Q.** A property owner builds a house on one acre of a large tract of land that is qualified for agricultural appraisal. He lives in the house and claims it as his homestead. Must he notify the appraisal district of a change in use?

A. Yes. The property owner must notify the appraisal district in writing before May 1 after the use changes. The land that now serves as a residence will be valued at market value, but the homestead will not be subject to a rollback penalty.

Pages 13 and 32 discuss the issues this question raises.

- 20. Q.** Thoroughbred horses are bred and raised on a 500 acre tract of land. The horses graze on 450 acres, 40 acres are used to raise grain to feed the horses, and a stable where the horses and supplies related to them are kept occupies five acres. Another five acres is set aside for training the horses to race and includes a running track. The land is primarily used to breed and raise horses, and is used to the degree of intensity typical for the area. May all or part of the land qualify for special use appraisal?

A. The 490 acres upon which the horses are bred and grazed and where feed for them is grown, qualifies. This land is used directly for raising, breeding, and supporting horses—all agricultural purposes. The land holding the stables also qualifies, because this area is used to support the raising of horses. The land where the horses are trained for racing, however, does not qualify. This is not an agricultural use of land.

Page 8 discusses the issue this question raises.

- 21. Q.** A small tract is used to board horses used by their owners for pleasure riding and show competition. The land has a riding ring, and the remaining land is available for pleasure riding. The property owner does not graze the horses on the land. May the land qualify for a special use appraisal?

A. None of the land will qualify for 1-d-1 appraisal. The use of this land to feed and care for horses is not incidental to an operation breeding and raising horses.

Page 8 discusses the issue this question raises.

- 22. Q.** A rancher grazes cattle over a large tract. He devotes most of his time and resources to raising cattle and growing feed for them. During part of the year, he leases his property for hunting wild game and game birds. Although the rancher principally devotes his land to cattle ranching, his income from the hunting leases is substantially greater than his income from cattle ranching. Does the tract qualify for agricultural appraisal?

A. Yes, the land would qualify. For 1-d-1, determining the primary use of land usually

does not have much to do with measuring or comparing income derived from each use. The owner's intent, and his commitment of energy and resources over a period of time are more accurate indicators of the primary use of the land.

Page 8 discusses the issue this question raises.

